NO. 88-765

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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APPENDIX II (Supplemental) PART D

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(Supplemental) APPENDIX II

PART D

Partial text of the Sworn Affidavit of PLAINTIFF/PETITIONER THANH VONG HOAI of March 25, 1987.

Paragraphs 319) through 436) pp 213-286

(Remainder of Affidavit in previous or subsequent parts.)

319) The next day was the long scheduled grand opening of the station. Many necessary acts and events were scheduled, as defendant VO well knew. Plaintiff went to the station around 7 AM. About 8:30 AM the defendant VO showed up at the station. He had a check book with him of "starter" checks from the McLean Bank. Ernie Peele of Sunoco was scheduled to arrive at 9 AM so I did not have much time. The load of gasoline and diesel fuel was scheduled to arrive at 10 AM.

320) I asked the defendant VO to give me the checkbook. The defendant VO then told me that he could not give me the checkbook because the bank had refused to open the account in my name and that he, the defendant VO, had therefore opened the account for his own signature. I was very angry but I had no time to be angry. The

defendant VO then signed six blank checks from the "starter" check book and left them with me, leaving in a hurry, saying that he had to get back to the big construction.

321) This was a fraud and a deceit, a deliberate misrepresentation following upon an earlier deliberate misrepresentation, designed, in both instances, to induce me to rely upon the misrepresentations to my harm and detriment, which I did. When the defendant VO said that the bank would not need to have me there at the bank to witness plaintiff's signature, that was a lie and it was a lie that he had even tried to open an account for the company for my signature. Defendant had intended all along to open the account in his own name and refuse to let the plaintiff have

knowledge of the account or its contents or control over it.

322) At this time also the defendant VO committed further fraud by telling me the outright lie that he, defendant VO, had put about forty-five thousand dollars ($45,000.) in this bank account at the McLean Bank. This lie and misrepresentation was designed to induce me to rely upon and write checks that would harm me and my business, having no choice but to write them, which I did to my harm and detriment.

323) I had decided upon the name for the business of the gas station and the corporation which I subsequently intended to form, of "Suntech Sunoco." To that end, when asked by Ernie Peele what name I wanted for the dealership, I had said "Suntech Sunoco." This was the name I

put on the application to Sunoco for the dealership, the name in which I had gotten my business occupancy license from the D.C. government, and the name in which I had ordered and paid for the insurance. It was also the name I had instructed the defendant VO to put on the account in opening it up for the station. In accord with this I filled in this name on the "starter checks," which defendant VO had brought to him.

324) Later I discovered that the defendant VO, in a further deceit, had opened up the checking account for the gas station at the McLean Bank in the name "Suntech Company," disobeying the instructions from me in a further deceit.

325) At 9 AM on opening day for the Sunoco station on Pennsylvania Avenue, S.E., April 10, 1987, Ernie Peele, the

area manager for defendant Sunoco, came to the station. I showed him the starter checks left by the defendant VO and Ernie Peele was satisfied on that score, not noticing that they were signed by the defendant VO and not the plaintiff. At this time I used one of the signed "starter" checks left by the defendant VO to give to Ernie Peele as the Sunoco area manager a check in the amount of one thousand four hundred and sixty-eight dollars and fifty cents ($1,468.50) to pay Sunoco for the inventory left from when the station had previously operated as a Sunoco dealership or franchise. I wrote this check by filling in the name of Sunoco as the payee, putting what I had chosen as the name of the business on the upper left corner of the check and filling in the amount stated all in reliance upon

the false representation of the defendant VO that he had put forty-five thousand dollars ($45,000.) in the account with the number on the "starter checks."

326) At 10 AM the route drivers from Sunoco in their tanker trucks arrived at the station, one with gasoline and one with a truck with diesel fuel. I paid these route drivers for their deliveries by filling out more of the signed "starter" checks given to him by defendant VO. To these drivers I gave "starter" checks on the aforesaid account at McLean Bank in the amount of around seven thousand and three hundred or four hundred dollars ($7,300. or 7,400.) for gasoline and about four thousand and five hundred dollars ($4,500.) for diesel fuel. Again, this was done in reliance on the deliberate false representation by the

defendant VO that he had deposited forty-five thousand dollars ($45,000.) in the account in the McLean Bank that the checks were drawn on.

327) That afternoon around 1:30 PM the delivery man of the TBA contractor came in his truck to deliver the Tires, Batteries and Accessories and other similar items (TBA). I gave this man another of the said "starter" checks which I filled in as the others but with an amount of about nine thousand dollars ($9,000.) representing payment to the TBA man for the TBA. Again this was in reliance upon the misrepresentation of the defendant VO about the money he put in the account.

328) I know upon information and belief that the defendant VO never put any money of his own in the account and indeed

that he had no money of his own, but that he merely took the cash proceeds from the gas station and put them in the said account over the next days and weeks to the harm and detriment of me as the false representations that he had put forty-five thousand dollars ($45,000.) were relied upon by me to plaintiff to my harm and detriment.

329) The defendant VO showed up at the station the next day, April 11, 1986, around 7 or 7:30 AM early in the morning, asking how much fuel and merchandise had been sold the previous day, insisting on seeing the readouts on the computers and asking how the pumps worked. The defendant VO asked me if I could train him to be a manager of the station, saying that he wanted to be the night manager for the station, which ran 24 hours. I

responded that, of course, I would train the defendant VO because he was my friend and because the defendant VO could then be my backup when I could not be there to manage. The defendant VO then insisted on taking the first day's receipts to the bank right away, he left and returned about an hour later.

330) After the defendant VO had stayed around all day learning from me how to manage the station, at the end of the day, about 7 or 8 PM, the defendant VO said to me (speaking, as they usually did, in the Vietnamese language) that money was money, and friends were friends and that he did not want the money situation to destroy his friendship with me so that he, the defendant VO would handle all the money for the gas station until, as he said, his lawyer could draw up a loan

document for the money he was advancing to me for the gas station business. Defendant VO said that until he had this loan agreement from himself to me drawn up by his lawyer, which he said he would have done, that he would take the daily receipts from the station and deposit them in the account which he had established for the gas station business in the McLean Bank.

331) I agreed that if the defendant felt that way he would agree to the defendant VO's handling the money until such an agreement was drawn up, but I asked the defendant VO to have the agreement drawn up by the defendant's attorney as fast as he could, to which the defendant VO replied that he would talk to the attorney in order to get an appointment to get the loan agreement

drawn up.

332) This was a fraud and a deception. Defendant VO had no intention of having such an agreement drawn up to memorialize the loan as actually agreed upon. Defendant VO had no intention of ever relinquishing control of the funds or the check book or statements of the bank account because he wished to cover up that he had not put the money he represented in the gas station account or anything close to the amount he represented. He had no intention of ever actually loaning the money as he agreed and, in fact, had no such money to loan. By these misrepresentations, defendant VO meant to induce me to rely upon them so that I might be vulnerable to the extortion that was to follow, and I did so rely.

333) Likewise, it was a fraud and a

deceit for defendant VO to tell me that he wanted to be trained to be the night manager of the station and to support me as his friend and backup. In reality defendant VO's only purpose was to learn to operate the station without me as fast as he could so that he might extort it from me.

334) From this point in time on the defendant VO no longer seemed to need to devote so much time to "big construction" but spent all day every day at the gas station.

335) In accord with my promise to train the defendant VO I did train the defendant Vo for the next few weeks in how to manage a gas station.

336) About four or five days after the opening of the gas station, on about April 14 or 15 or thereabouts, the

defendant THACH showed up at the gas station one day about 3 or 4 o'clock in the afternoon. The defendant THACH looked all around the station and was all smiles. You have a very good business, here, Mr. Hoai, he said, you're going to make a lot of money.

337) On this occasion the defendant THACH said to the plaintiff that the station was so busy and had such a volume of business that it would be a good site for a "mini-market" that would sell food, drinks and sundries and that he would have a plan drawn up for such an addition.

338) I informed these two defendants VO and THACH that Sunoco already had plans for a market on the site, called in the company a "C Market" and already had drawn plans for modifying the building for that purpose but that Sunoco required the

volume of fuel sales to be increased to over one hundred thousand gallons a month before they would implement such a plan. The station was then selling, having just opened, at a rate of about fifty or sixty thousand gallons a month of fuel.

339) At this time the defendant VO who was there said to me and the defendant THACH that a market was a good idea and he would move one of his hot dog vending trailers in to the station and sell hot dogs. To this I replied that this was illegal and that Sunoco would not allow it. The defendant VO said not to worry about Sunoco because the station was "our" station and we can do what we want. I explained to the defendant VO that though I had the franchise and the lease, Sunoco owned the property and was the lessor and that also they had no license for such

food sales. The defendant VO responded that they would just bring in the hot dog trailer anyway until Sunoco complained and then, he said, we will talk to Sunoco.

340) This was a fraud and deceit. Defendant VO had no intention of talking to Sunoco. He intended to get another source of income with which to play his "Ponzi scheme" of putting money into the aforesaid bank account to try to cover the checks he had induced the plaintiff to write before they "bounced." Right away the next day defendant VO moved a hot dog trailer into the gas station and had his relatives and in-laws selling hot dogs, drinks and other foods out of the trailer, so that he could generate, as he did as near as I could tell, another three or four hundred dollars ($300. or $400.) a day to put in the aforesaid bank account.

Defendant VO never allowed any of this money to be in the access of me or in any way offered to let me benefit from the sales of the hot dog trailer which defendant VO moved in on my gas station.

341) Defendant VO also meant to cause trouble between me and Sunoco as part of his plan to take over the business of the gas station by fraud and extortion, as his subsequent behavior showed.

342) When defendant VO brought the hot dog trailer into the station I asked him to get it out the station because it was against the rules. Defendant VO told me not to worry about it, because, he said, this is the way we can make money, we can make a profit. (He never, however, offered to share any of the income from the hot dog trailer with me or to pay me or Sunoco any rent for the space.

Nevertheless, I, in the interest of not offending someone who he felt was a friend who had loaned him money, said nothing further at that time.

343) A few days later, Ernie Peele came to the station on business for Sunoco and when he saw the hot dog trailer, he asked me who had put the hot dog trailer there. When I replied that it was my friend VO, Ernie Peele instructed me to tell the defendant VO to remove the hot dog trailer.

344) That same day, after Ernie Peele had left, I told the defendant VO that Ernie Peele had told me to tell the defendant VO to remove the hot dog trailer. The defendant VO replied (in the Vietnamese language) that Ernie Peele was just a black guy and that he and I did not have to listen to Ernie Peele because he

was black.

345) The defendant VO then proposed to me a plan that would change their situation and make Ernie Peele happy. The defendant VO said to me that he wanted to put more money into the gas station in order to make it grow faster, as he put it. He wanted to put in the rest of his hundred thousand dollars ($100,000.), which would have been fifty-five thousand dollars ($55,000.) over and above the forty-five thousand dollars ($45,000.) he claimed that he, the defendant VO, had already put in the gas station's account at the McLean Bank. The defendant VO proposed that he would put in this additional money and increase business by a plan of advertising, on radio and in newspapers, and promotions, such as giveaways of toys to families making large

purchases, and so on. If this was done, the defendant VO explained to me, then Ernie Peele would be happy because the business of the station would be growing so fast and Ernie Peele wouldn't be concerned about the hot dog trailer on the station premises.

346) Because I still believed at this time that the defendant VO was really putting up money, I told the defendant VO that this was a good plan.

347) The defendant VO then said that since he was going to put in more money he wanted to be a partner in the business and change the situation from being just a friend giving a loan to one of being a partner in the business. I told the defendant VO that he did not think he could just make the defendant VO, or anyone else for that matter, a partner in

the franchise or the lease, since he was the individual named in those two documents and that he thought that Ernie Peele, as the Sunoco area manager, would object to his making VO a partner in the business, especially since the defendant VO had told Ernie Peele back on March 21 when Ernie Peele had questioned him closely about possible ownership interest in the gas station that he, the defendant VO, had told Ernie Peele that he had no ownership interest in the station, hidden or otherwise and that he had no interest in any such ownership and was only making a loan to a friend.

348) To this the defendant VO responded that he did not mean he wanted to be a partner in the franchise and lease but only in the profits and that he could invest in the gas station business and be

a partner in the profits as a return from that investment and there was nothing that Sunoco could do about that.

349) I said that he would agree with this because (and this I fully believed) the defendant VO was my friend who had already helped me by lending thirty-five thousand dollars ($35,000.) to me to start the gas station business.

350) Defendant VO proposed that since he was now going to be investing one hundred thousand dollars ($100,000.) in the station, he wanted to split the profits from the gas station business with me 50-50 and he said that by profits he meant the amount left after basics such as rent, utilities and other general expenses were paid. I agreed to this new arrangement.

351) Defendant VO brought up two

things as part of this "new situation." First he said he wanted to be on things such as the business occupancy license by name and he also said that he would produce good "certified mechanics" for the station as part of his support of the business.

352) When I applied for the franchise and lease from the Sunoco I contacted and brought to the station qualified mechanics whom I knew who were certified both for mechanical work and re-inspection of motor vehicles to meet the requirements of the District of Columbia motor vehicle laws for vehicle re-inspection. These individuals came to the station after I opened it up on April 10, 1986, and did some work. After the defendant VO stated his aspirations to become a station manager as set out above and began staying

at the station night and day, these individuals came under the supervision of defendant VO during the frequent long periods when they were at the station with the defendant VO and I was not there. Later, in the last part of April, after this conversation alluded to above, when I was trying to regain control of my gas station lease and franchise, these individuals told me that they would not come back and work at the station as long as his friend VO was around. They refused to elaborate at the time on why they would not do so but stated that it was because of the defendant VO and things that he had done. I know it on information and belief that defendant VO deliberately drove these individuals away as part of the conspiracy to defraud and extort the station from me.

353) At this time, on or about April 17th or 18th, 1986, the defendant VO stated to me that as part of this new "partnership" in the profits of the station, he would bring in "certified mechanics." This was a fraud and a deceit. Defendant VO had no present intention at that time of bringing in certified mechanics, but only of bringing in individuals who were under his control and loyal to him for various reasons so that he might, with his co-conspirators, more easily extort the station from me when the time came to reveal his true intentions and engage in threats of harm and physical violence and death to me and my family. At the time, however, I unsuspecting, relied upon this misrepresentation to my harm and detriment.

354) In this same conversation, on or about the 17th or 18th of April, 1986, the defendant VO also stated to me that as my partner in profits of the station, he wanted his name on the various licenses of the station along with mine. Reluctantly, I agreed to that and told the defendant that the very next day he was going to the Department of Licenses and Inspections of the D.C. Government to obtain the occupancy permit for the station, which had to be obtained within thirty days of the opening on April 10, and he would put the name of the defendant on the occupancy permit. And the very next day I, accompanied by the defendant VO, went to the Department of Licenses and Inspections and, in the forms that he filled out for the occupancy permit, he put the name of the business as "Suntech Sunoco," and

listed himself as the president of Suntech Sunoco and the defendant VO as a "partner" in Suntech Sunoco.

355) This was part of the fraud and deceit of the defendant VO. The defendant VO had no intention at that time of being the "partner" in profits of my station. He had no intention of sharing in partnership with me. His intention was to gain sufficient practical control or "leverage" over the business to make it easier to force me to give up the business by extortion and threats of violence.

356) Persuading me to put his name on the occupancy permit was a fraud and deceit by defendant VO, intended as a step to enable the defendant VO to be in a position to steal the business name of Suntech Sunoco and represent himself fraudulently to the authorities as the

owner of the franchise and lease so as to illegally and fraudulently obtain licenses and permits in his own name once the intended extortion had been carried out.

357) Now all of this about putting more money in and getting more involved as a partner in the profits of the station on the part of the defendant VO was a fraud and a deceit. The defendant VO had never had a hundred thousand dollars ($100,000.) in capital as he well knew. He never put forty-five thousand dollars ($45,000.) in the company account as he had represented and he did not have and had no intention of putting into the gas station business any additional fifty-five thousand dollars ($55,000.) to fill out the one hundred thousand dollar ($100,000.) pledge which he had fraudulently made. The defendant VO had no intention at the time of

financing or undertaking any advertising and promotion campaign such as he described and promised and he never did undertake or finance any such effort or put up any of the promised fifty-five thousand dollars ($55,000.). All of this was intended to make me feel dependent upon him to my harm and final detriment so that I might be vulnerable to the extortion that was to follow.

358) Along about the 19th through the 22nd of April or thereabouts, the defendant VO brought into the station the men he said he was hiring to fulfill his pledge of bringing in "certified mechanics." None of these individuals were certified mechanics as promised. All, however, were from the Philadelphia, Pennsylvania, area, from Texas, or somewhere else outside the Washington,

D.C., metropolitan area, so as to have no local connections and so that there be no chance of their upsetting the extortion scheme. All were induced to come by various misrepresentations, including particularly that the defendant VO was the owner of the lease and franchise. One individual, named Chung, was from the Philadelphia, Pennsylvania, area, and was, or claimed to be, a man with a degree in mechanical engineering. He had been induced to come by promises that were false as to the ownership of the station, the size and nature of defendant VO's interests in the petroleum and service station business and the nature of the position he was to occupy. Another was named Giao. He also was induced to come by false promises. I, HOAI, have it on information and belief. Another was a

young man known only as Peter. Peter was from elsewhere, had no relatives or friends and, since the extortion and his troubles with the defendants, has disappeared.

359) The defendant VO preempted all management control of these individuals and said that he was hiring them, but did not hire them in accord with law, paid no withholding on them, did not register them and their employment as required to meet various laws and regulations, paid them only sporadically or often not at all, and gave them no proper regular salary or employment in the sense in which that term is understood in American society. The defendant VO treated these individuals as kind of a private, contract labor force with whom he could do as he pleased. He never kept proper records or proper

accounting records with regard to them.

360) Along about the 17th of April, 1986, or thereabouts, I went in the evening to the home of the defendant THACH, whom, at this time. I, HOAI, still believed to be the owner and president of the McLean Bank as the defendant THACH had fraudulently led him to believe. At the home of the defendant THACH I asked the defendant THACH where the long-promised loan application forms for the fifty thousand dollar ($50,000.) loan promised by defendant THACH and the defendants MINH and LUU were. At this time the defendant THACH replied that the defendants MINH and LUU had instructed him not to give the loan forms to me after all. He offered excuses and alibis for this breach of the promises which he and defendants MINH and LUU had made. Then he, to my surprise,

told me that I was lucky that this had happened because, he said, the defendants MINH and LUU had never intended to give any of the fifty thousand dollars ($50,000.) promised to me anyway but rather to keep it all for themselves. In reality this was another fraud and deceit designed to get me further into the trap which the defendants were building so that they might extort both business interests from me and my wife, both the gas station and the interest built up in the Mekong Center food market.

361) At this time the defendant THACH asked me how the gas station was going. I said that it was going well and business was building up. During this conversation the defendant THACH, surprisingly, told me that he did not think that the defendant VO had any money

in the gas station. I, who, at this time, believed that the defendant VO had put forty-five thousand dollars ($45,000.) in the gas station's account that he had opened up as he represented, did not believe the defendant THACH when he said this and told the defendant THACH that I did not believe it. The wily THACH was "softening up" me up by telling me these truths in order that I would continue to believe in THACH, the phony bank president, even after the dishonoring of checks on that account that defendant THACH knew I was to become disillusioned with the defendant VO.

362) From the day of the opening of the station on April 10, when I, HOAI, had written in the amounts on the checks signed by the defendant VO, until April 24, 1986, I did not fill in or issue any

more checks on the station account. I had only issued the checks to Ernie Peele, the Sunoco drivers and the TBA representative on that day, April 10, as alleged above. Nor, so far as I know, did the defendant VO write any checks on that account during that period. At least I, HOAI, know of no disbursement by check on behalf of the gas station that was made during that period from April 10 until April 24. The employees had not yet been paid any salary and no other expenses had been paid.

363) Every day, beginning with April 11, as alleged above, the defendant VO had taken the receipts of the gas station and had disappeared with them every morning about 7 AM when the shift changed, saying he was taking the money to the bank. I, HOAI, and the defendant VO would count these receipts every morning before the

defendant VO would go off with them and these receipts, as I recall, averaged about one thousand and five hundred dollars ($1,500.) per day during the two weeks from April 10 until April 24, 1986.

364) Late in the morning on the 24th of April, 1986, I received a telephone call at the gas station from John Pendergast in Philadelphia, Pennsylvania, the head of credit for the Sun Oil Company. John Pendergast asked me how things were going with the gas station and when I replied that everything was going perfect, John Pendergast then asked me how come I had just bounced a check to Sunoco for over seven thousand dollars ($7,000.) for the gasoline that had been delivered back when the station opened on the 10th of April.

365) I was completely surprised. I

told John Pendergast that I would have to contact the bank and find out what was going on and then get back to him.

366) Immediately after I had hung up from talking to John Pendergast, the credit supervisor for the Sun Oil Company, I went to the defendant VO, who was there at the station and demanded to know from him why he had lied to me about lending me thirty-five thousand dollars ($35,000.) and putting forty-five thousand dollars ($45,000.) in the bank and putting in even more money into the business, up to one hundred thousand dollars ($100,000.). I asked him where the money was.

367) The defendant VO replied that his father had not given him the money because his name wasn't on the franchise agreement.

368) I, HOAI, asked the defendant VO

why all this talk about defendant's father. I told the defendant VO: :You never told me you had to get your money from your father, you told me you had the cash on hand, one hundred thousand dollars ($100,000.). I asked you at least fifty times, "I said to him "you said you had the money."

369) The defendant VO began to blame it on the defendant THACH, saying: "That god-damned Thach, he said he put the money in the account. I don't know what has happened to him. Let me go to see him and I will be back to tell you what happened." This statement revealed to me for the first time that the defendants VO and THACH were colluding together in connection with the financing of my gas station franchise and dealership.

370) Defendant VO was acting very

agitated and nervous. After this discussion he got in his van and drove off.

371) After defendant VO left, I called the McLean Bank and identified myself as the owner of the station franchise and said I wanted to check on the station's account. The bank official who answered said that according to the computer, the gas station was overdrawn over one thousand and five hundred dollars ($1,500.) and that a check had been returned for insufficient funds in an amount of over seven thousand dollars ($7,000.). I said thank you very much and hung up.

372) Later in the day, in the evening, I, HOAI, called the defendant THACH on the telephone and, failing to reach him at his own house, located the

defendant THACH by telephone at the home of the defendants MINH and LUU. I asked defendant THACH what was going on, that defendant VO said that he, the defendant THACH, had put money in the gas station's account in the McLean Bank. Why did the gas station's check for gasoline to Sunoco bounce.

373) The defendant THACH displayed no surprise in his voice and said that it was because the defendant VO had "not listened to" him. I replied "listen to him what ?" I said that defendant VO had told me that he had one hundred thousand dollars ($100,000.) on hand and that he, the defendant VO, had put forty-five thousand dollars ($45,000.) in the McLean Bank. I asked the defendant THACH on the telephone why he hadn't put the money from defendant VO in the bank account.

374) The defendant THACH informed the plaintiff that the defendant VO had given him no money and he couldn't put money in the bank if the money wasn't given to him. Defendant THACH then told me that the defendant VO had never put any money in the account since the station had opened, that all the defendant VO had done was put the money in every day from the gas station.

375) I then asked the defendant THACH how he knew so much about a single account out of so many in the bank and the defendant THACH replied that he was the owner of the bank and that he knew about every account in the bank. The defendant THACH told me that I could not get blood out of a stone. I asked the defendant THACH what he meant by that and the defendant said that the defendant VO did

not have the money and so he could not put it in the gas station.

376) I, HOAI, said that the defendant VO had confirmed with him many many times that he had a hundred thousand dollars ($100,000.) on hand in cash. The defendant THACH told me that if I saw defendant VO, I should tell him to come see THACH and bring his assets statement and he, the defendant THACH, would put the money in the bank for the gas station.

377) I ended the conversation by asking the defendant THACH to remind the defendants MINH and LUU to sign the lease for him on the Mekong Center food store. The defendant THACH asked me to keep calm and said that he, the defendant THACH, would get the defendants MINH and LUU to sign the lease.

378) The next day the defendant VO

did not show up. I telephoned the Sun Oil Company's credit manager John Pendergast, in Philadelphia, Pennsylvania, and told him that I had checked at the bank and that there was indeed no money in the account and that I still did not know what had happened or whose fault the error was but I would let him know as soon as I did.

379) John Pendergast told me that it didn't matter whose error it was, from now on I would have to pay with a certified check or cashier's check, that I had to make up the bounced check with a certified or cashier's check right away and that if it happened a second time th plaintiff would half to use cashier's checks in dealing with Sunoco for life, no more personal checks, no more business checks.

380) This was part of the deliberate plan of fraud and extortion of the defendants, to damage plaintiff's relationship with defendant Sun Oil Company in this way.

381) The next day, April 26, 1986, in the morning the defendant VO was at the gas station about 7:30 AM when I arrived for work.

382) I asked the defendant VO where he had been. The defendant VO said that he had been up in West Virginia to see his father to ask him for the money but that his father had said that he wouldn't give him the money because his name wasn't on the lease for the station. His father had said, he said, that he, the defendant VO, hadn't done well in the construction business and therefore he wasn't going to give him money for the gas station unless

his name was on the lease.

383) This was fraud and deceit just as much as the story it replaced about the defendant's having the money himself. The father of defendant VO had not made any such representations. This was merely designed to set me up for the extortion that was soon to follow.

384) I,HOAI, asked the defendant VO why he had told me before that he had the money and not that his father had the money and might not give it to him. "You told me many times, I asked you many times, that you had a hundred thousand dollars ($100,000.) on hand," I said to him.

385) I then asked the defendant VO what he was going to do about the bounced check to Sunoco.

386) The defendant VO replied that I,

HOAI, shouldn't worry about it, now, he, the defendant VO, had the money in the bank to cover the check, the check was good. Just tell Sunoco to put the check through again, he said. I told him no, that I could not do that, Sunoco wouldn't let me. You go get a certified check today, he said to the defendant VO, since you have the money in the bank; I must send it to Philadelphia right away. The defendant VO told me to take it easy, that the bank had made a mistake, that the bank would send a letter to Sunoco explaining it.

387) It was after this part of the conversation that I, HOAI, told the defendant VO that I wanted him and the defendant THACH out of my gas station, that he would pay the defendant VO and the defendant THACH every last penny that they

had actually put in the gas station. (At this time I, HOAI, had in the gas station a log book which I and the defendant VO had compiled every day in which they entered the receipts from the previous 24 hours when they added them up in the morning, so he knew how much had been generated by the station itself. Later this book was taken by the defendants after they extorted the station from me.)

388) To this the defendant VO replied: It is not so easy as you think, Mr. Hoai, I will go see my brother.

389) In response I, HOAI, asked: "Who is your brother?"
The defendant VO replied that the defendant THACH was his brother. Defendant VO then left the station.

390) When I, HOAI, had visited and

eaten at the house of the defendant THACH from the 18th of March on, there was usually a bodyguard of THACH's there, trained in the martial arts, named DI. There were also other men around always, some of whom lived there, said to be cousins and other relations.

391) About noontime that same day the defendant VO returned to the station along with the defendant THACH. The defendant VO was in his Chevy van. The defendant THACH was driving a separate 1986 Ford van conversion and had with him in it the man Giang, who was one of the ones who lived in defendant THACH's house.

392) I, HOAI, was standing by the gas pumps. The defendant THACH walked up to me, along with the defendant VO, and said "What's going on ? I heard VO tell me that you want the station back." I, HOAI,

replied: "That's right, I want to get my station back."

393) Defendant THACH said: "We can figure that out for you now. First, if you want to get the gas station back, you have to have two hundred and forty thousand dollars. ($240,000.). I responded, "What two hundred and forty thousand dollars, are you kidding me ?" Defendant THACH then said to me that defendant VO had put about one hundred and forty thousand dollars in inventory in the station, to which I replied: "What hundred and forty thousand dollars in inventory ? You give a bad check for seven thousand dollars and you talk about a hundred and forty thousand dollars in inventory."

394) The defendant THACH then said that I would have to reimburse for VO and pay VO for everything, that VO had paid

over one hundred thousand dollars ($100,000.) to relocate employees to the station from Pennsylvania, from Texas, from New York, to move them and pay to rent homes for them and other expenses and that VO's accountant had everything and he would make a record of it. I replied that it was none of his concern, that he had no agreement to hire any of those people and had never authorized anyone to hire them.

395) By this time I, HOAI, defendant VO and defendant THACH were in the office of the station. The man Giang was in the van. A number of the men of VO and THACH who they were now using as the attempt to try and extort the one hundred thousand dollars ($100,000.), men loyal to VO and THACH, were in the garage of the station.

396) Thach said to me: "Why you say

you give the station to VO and now you lie to us ? We will kill you. VO," he said, "was a pilot-major in the air force; he knows how to take care of people like you. You lie to us, we will kill you."

397) I, HOAI, said: "Go ahead !" He was so angry and upset I was not thinking about the risks. Then these two defendants left. This was around the luncheon hour.

398) Later that afternoon, I was called on the telephone by the defendant THACH, who said that he was calling from the office of the lawyer ARIF, (the defendant ARIF.) The defendant THACH said he wanted me to come to the office of the lawyer defendant ARIF and sign the note for the money allegedly owed to "us," referring to the defendants THACH and VO.

(a) The Defendant Arif

399) About 6 O'clock or so that evening I went to the law offices of the defendant ARIF at the firm of Busman and Busman on Braddock Road in Fairfax County, Virginia.

400) I had been to these offices before and had dealt with defendant ARIF before and had noticed that the defendant ARIF acted in a pattern of tricking people, of double and even greater representation, and conflict of interest.

401) It came about in this way. I had first came across the name of the defendant ARIF in February when I was working on the business of helping to settle disputes between the defendants MINH and LUU and their creditors. At that time I saw the name of the defendant ARIF as attorney for the defendant THACH whom I did not know at that time either. The

papers which I saw at that time showed defendant ARIF as having a different address from the one he had by this time in April.

402) In March on 3 or 4 occasions I had to go to the offices of the defendant ARIF in company with the defendants MINH and LUU. At that time I was currently employed to do business work for the defendants MINH and LUU on the strength of their promises that they were going to obtain and co-sign for me the fifty thousand dollar ($50,000.) loan as aforesaid, as a return favor in other words. In connection with this work for defendants MINH and LUU in March I already had been called several times by the office of defendant ARIF.

403) On one of these occasions in March when I visited the offices of

defendant ARIF with defendants MINH and LUU, I had observed double representation, conflict of interest and attempts at trickery and deceit by the defendant ARIF that led me to believe that I should not trust the defendant ARIF.

404) This was late in the afternoon on March 21, after I had had the meeting that same day with Ernie Peele, the area manager for the Sun Oil Company and the defendant VO at which the defendant V disappeared for several hours before returning with the deposit money for Sunoco. It was about 5:30 PM or so that day when I finally went to the offices of the defendant ARIF, which at that time were at the firm of Busman and Busman on Braddock Road in Fairfax County.

405) My purpose in attending this meeting on this on this day as th

business agent and interpreter for the defendants MINH and LUU as aforesaid. The meeting had been arranged at the offices of the defendant ARIF at the initiative of defendant THACH and the defendant ARIF as the attorney of the defendant THACH, by telephone, in connection with certain negotiations between the defendants MINH and LUU on the one hand and the defendant THACH on the other in which there was a claim by defendant THACH to a commission for an alleged sale of real estate belonging to the defendants MINH and LUU. At this time the defendant ARIF had already represented defendant THACH in other matters and was continuing to represent him.

406) When I and defendants MINH and LUU arrived at the offices of defendant THACH's attorney, the defendant ARIF began

to conduct negotiations between me and the defendants MINH and LUU on the one hand, and the defendant THACH on the other hand. The secretaries had left for the day and no one else was in the office.

407) On this occasion, the defendant ARIF had a note and other papers drafted out ready for the defendants MINH and LUU when they arrived. The defendant ARIF gave copies of these documents to each of the defendant MINH, to me, to the defendant THACH and himself for everybody to read, as he said, before the defendants MINH and LUU signed the documents. During the meeting the defendant ARIF referred to the defendant THACH as THACH, the banker and described him also as the president and owner of the bank.

408) The defendants MINH and LUU are not very proficient in the English

language and do not read it well at all. By comparison, though I read it with difficulty and slowly and do not know many longer or technical words, I am much more proficient in English than they are.

409) When I finished reading the documents being proffered to MINH and LUU I saw that one was a note that they were being asked to sign for a definite amount of thirty-eight thousand dollars ($38,000.) which would be due at the very latest by March of 1987 and which somehow tied up land belonging to the defendants MINH and LUU in Montgomery County, Maryland.

410) Before they arrived at this meeting the defendants MINH and LUU had explained to me that what they thought they were signing was a promise to pay the defendant THACH a commission if a

potential buyer to whom he claimed he had offered it, were to buy a house they owned on River Street in Arlington, Virginia for any price in access of three hundred and sixty thousand dollars ($360,000.). Although the buyer THACH claimed to have was a Malaysian gentleman whom the defendants MINH and LUU knew, by the name of Marznki Kamagi, and to whom they had in fact sold their ill-fated Mekong Restaurant in the Tyson's Corner shopping center, defendant THACH claimed that he was owed a commission of everything over this amount because the defendants MINH and LUU had promised him that if he found a buyer and they had not approached the man Kamagi even though they knew him and had dealt with him.

411) Now defendant THACH is not and never has been licensed to sell real

estate. The man Kamagi whom the defendant THACH was holding up to the defendants MINH and LUU as a purchaser had not paid any money down to the defendants MINH and LUU and, as part of the deal, was trying to move into the house on River Street in Arlington before any money was paid out to the defendants MINH and LUU. The only prospect of money was the fraudulent promise of the defendant THACH as the fraudulently represented owner and president of the McLean Bank to obtain a loan for the purchaser Kamagi for the full three hundred and ninety-eight thousand dollar ($398,000.) purchase price of the house. All of this was a fraud concocted by the defendants THACH and ARIF to deceive defendants MINH and LUU and get them in the power of the defendant THACH. Both defendants THACH and ARIF knew that

THACH was not the president and owner of the McLean Bank and had no power and no intention of making or obtaining any such loan and it was all designed to induce the defendants MINH and LUU to rely upon it to their harm and detriment which they did.

412) On this occasion, I was able to see that the note was a very dangerous one for the defendants MINH and LUU to sign in that it was far more than a contingent promise to pay the defendant THACH a commission if the man Kamagi actually purchased the house from the defendants MINH and LUU. In fact the note, a copy of which was later attached to a counterclaim filed in a suit by defendant THACH against the defendants MINH and LUU over these and other matters was a deed of trust note which tied up certain land of the

defendants MINH and LUU in Montgomery County, Maryland, and assured defendant THACH of virtual control of that land. I, HOAI, after reading the deed of trust note on this occasion, advised the defendants MINH and LUU not to sign it. I further explained to them that there was no assurance that they would ever get any money if they signed the note.

413) After I had advised this to defendants MINH and LUU, the defendant ARIF, without advising them in any way that he was in fact the attorney for the defendant THACH and that they maybe needed an attorney of their own, advised the defendants MINH and LUU that THACH was the banker and that THACH was just advising them to sign the note in order that he could get the money for the buyer Kamagi to buy their house so that they could get

their three hundred and sixty thousand dollars ($360,000.). Against my personal advice acting as their translator and (then) friend and business advisor, the defendants MINH and LUU signed the note.

414) On this occasion the defendant ARIF falsely and fraudulently told the defendants MINH and LUU that he was their lawyer when he was not and that THACH was their banker, which he was not. Later the defendant ARIF sent a bill by mail to the defendants MINH and LUU for his services on that occasion for over a thousand dollars ($1,000.)

415) Because of these and other things, I knew of the habits of fraud and deceit of the defendant ARIF and of the pattern of fraud using telephones and mail that defendant ARIF would engage in. So on April 26th, 1986, when invited to the

offices of defendant ARIF, I was on my guard.

416) On that day of the 26th of April, when I arrived at the offices of the defendant ARIF about 5:30 or 6:00 PM I saw the defendants VO and THACH there with the defendant ARIF. Again, as at that earlier meeting with the defendants MINH and LUU, there were no secretaries or other personnel present. It was later, according to my best information and belief, that the defendant was asked to leave the firm of Busman and Busman for activities in pattern with those complained of here.

417) On this occasion I refused to shake hands with the defendant ARIF. When I had done this, the defendant THACH said to me, speaking all this time in English and not Vietnamese, that now we will

straighten it out about the gas station. We will work together to locate the money to put in the gas station. Vo has no money the defendant THACH explained, but if HOAI would sign a contract selling the gas station "business" to the defendant VO for one dollar, then he, the defendant THACH would go to "his" bank (meaning the McLean Bank which he had previously held himself out as the president and owner of,) and get the money the gas station needed, maybe two, three, four hundred thousand dollars ($200,000.; $300,000.; $400,000.).

418) I replied to this by asking to see the contract. The contract was handed to me by the defendant ARIF who had on his desk. It was drawn on the stationery of the defendant ARIF and, as with the earlier note for MINH and LUU, had been

prepared by the defendant ARIF, in several copies. Defendant ARIF gave a copy each to the defendants VO and THACH, himself and to me.

419) When I first saw the contract I saw that it was a proposal for me to sell the "business" of the gas station including my lease with Sunoco, my franchise with Sunoco, all my statements to and agreements with Sunoco, my receipts from Sunoco, my insurance certificate, my sales tax exemption certificate, my UCC financing statement, in short all of the documents of my ownership in the franchise and lease, all for one dollar. Although I am not a lawyer, I know this was a) an attempt at an unconscionable bargain following the threats of death against me and b) that I could not sell all of these documents that were in my name without the

permission of Sunoco and the other parties who had given them to me.

420) I said simply, after reading the proposed contract to sell my business for one dollar: "I'm not going to sign it." I also informed these defendants at that time that without Sun Oil Company's permission I could not sign such an agreement in any case.

421) At this time the defendant ARIF said that, yes, he had read the Sunoco franchise agreement, and that was right I was not able to sign such an agreement without the permission of the Sun Oil Company.

422) When the defendants VO and THACH heard this, they said that it was just between the parties present and Sunoco did not need to know about it.

423) Then I said: "Well, I cannot

sign this." And I left.

424) On the next day, the 27th, I arose to go to the gas station early in the morning about 7 AM. There I saw the defendant VO. The defendant VO asked me at this time if I knew that the McLean Bank had sent a letter to Sunoco explaining that they had made a mistake and that the lack of funds in the account was their error. I responded that I did not know that but that I was upset with the defendant VO.

425) In fact, I was so upset by these events of past 48 hours, that I left the station and went to the Mekong Center food store.

426) From the Mekong Center food store, I called John Pendergast of the Sunoco credit department in Philadelphia and asked him if had received the letter

from the bank apologizing for the overdraft and saying that it was the bank's error. John Pendergast told me that he had not received the letter yet but that it made no difference, letter or no, I would have to pay by cashier's or certified check for one month.

427) While I remained at the Mekong Center food store that morning the defendant VO called me there on the telephone, saying that the defendant THACH wanted to see them both. I responded sharply: "See me for what ?" The defendant VO said he (the defendant THACH) wants to help us to have some kind of money. For the prospect of getting the money, I said I would come. Defendant VO then told me that the defendant THACH wanted to meet them both at his house that night.

428) I said: "If he (the defendant THACH) has some kind of money, I come." The conversation ended.

429) That afternoon early, just after lunchtime, the defendant THACH called me at the Mekong Center. The defendant THACH when he called on this occasion was very apologetic to me and he particularly apologized for the way he had acted with defendant VO toward me the previous day. "We are the brothers," he said, "Why we hurt each other ?" The defendant THACH then said: "I want to invite you and VO to come to my house this evening to eat dinner with us. I want to help both of you to have some kind of money." (translation into English). I said: "What kind of money you talking about." (translation). The defendant THACH then said that he was talking about money to

help me and the defendant VO for the gas station. I then told the defendant THACH that I would come that evening about 10 or 10:30 O'clock PM. I called my wife at this time and she was afraid and warned me not to go to the meeting because she was afraid since I had told her about the death threats of two days before. I decided to go anyway.

430) That evening I went to the home of the defendant THACH in Springfield, Virginia, at the above address.
When I arrived there the defendants THACH and VO were there along with DI, the defendant THACH's bodyguard, the man Giang who had been at the gas station two days before when they threatened me with death and another man whom I did not know but who was introduced to me at this time as the brother of the Four Star General

Khiem. This last man introduced himself to me very cordially.

431) Immediately after the cordial introduction with the man who was introduced as the brother of Four Star General Khiem, the parties sat at the dining room table. The defendant THACH produced a copy of the same contract which they had produced at the office of the defendant ARIF the day before. At this time the contract was still on the letterhead and stationery of the defendant ARIF. 432) At this time the defendant THACH started talking about how he, the defendant THACH was "strong" and the defendant VO was strong and how I was also "strong" and how all we "strong" Vietnamese need to work together and everybody will be strong. The defendant THACH stated that there was no reason why

only the Italian mafia should be strong but that the Vietnamese should be strong also and that there was no reason why I should not join in with them and we could all make money together.

433) The defendant THACH explained to me that since he, the defendant THACH, was president of the bank, I could not get the money for the gas station out of the bank or from anywhere else without his, THACH's approval and help. This is the opportunity to get the money out, the defendant THACH explained to me and he demanded to know why I was holding up the opportunity.

434) At this time I told the defendant THACH in front of the others: "I told you yesterday that I will not sign the contract. Sunoco will not allow me to sign the contract." The defendant THACH at

this time told a fraudulent tale of woe about the defendant VO who was sitting there but who said almost nothing during the exchange of words that followed. The defendant THACH said to me in front of the others at this time: "Why do you lie to us Mr. Hoai, you promised to give the station to VO as a gift." (this whole conversation was in Vietnamese) To this I replied in disbelief: "What gift ? I am not crazy to give away a hundred and thirty-nine thousand dollar ($139,000.) gas station free." The defendant THACH said: "You lie to us, you lie to us, motherfucker." At this point the defendant THACH accused me of "destroying the family of the defendant VO" by lying and not giving the gas station to the defendant VO. This tactic was so ludicrous it almost made me laugh even though I was scared. I said

that the defendant VO's home life was his concern and that I had nothing to do with any divorce between VO and his wife. They put the money in, the defendant THACH replied, and now you not give them the gas station. I replied that he did not know about any putting the money in, all I knew about was that defendant VO had agreed to loan me thirty-five thousand dollars ($35,000.) out of one hundred thousand dollars ($100,000.) which the defendant VO had insisted many times that he had on hand.

435) To this the defendant THACH again said: "You lie to us." He told me "We have enough money to burn your life. (translation into English) "We have enough money to kill you." I replied: "Well, go ahead." The defendant THACH said: "It won't be on my hands. You could have an

accident. I do not need to use my own hands to kill you any time. Someone will do that for me. If we kill you we have many different ways. The law cannot get anything on us." I said: "Go ahead." And he got up and left. No one said a thing. No one rose. All sat and laughed hysterically as he let himself out the door. During the entire conversation the defendant VO sat there with a funny smile on his face, agreeing and smiling and grinning at everything the defendant THACH said. From the beginning of this encounter the defendant THACH had been plying everyone with expensive drinks such as V O whisky, Hennessy Cognac and other expensive brands.

436) Previously, on one of my visits to the house of the defendant THACH one evening, before I was notified by John